

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
CASE NO.: 5:09-CR-216-8FL

UNITED STATES OF AMERICA )  
 )  
 vs. )  
 )  
 ZIYAD YAGHI, )  
 )  
 Defendant. )

DEFENDANT YAGHI'S  
MEMORANDUM PURSUANT  
TO ORDER [409]

NOW COMES Defendant Ziyad Yaghi, and files this Memorandum pursuant to the Court's Order [409] filed June 9, 2010.

1. The defendant was indicted on July 22, 2009, which indictment was superseded on Sept 24, 2009. The defendant is charged with two counts of a conspiracy to provide material support and resource in carrying out a conspiracy to murder, maim, kidnap or injure persons in a foreign country. The undersigned was appointed to represent the accused and entered a notice of appearance on July 28, 2009.

2. As part of the massive discovery in this case, the Government has provided defense counsel a number of computer hard drives, including several from this defendant. The Court has required all counsel to state whether counsel agrees or disagrees with certain statements attributed to counsel for Daniel Boyd or Hysen Sherifi regarding whether counsel becomes a witness in the case merely by reviewing the computerized hard drives.

3. The undersigned defense counsel does not agree that an attorney for a defendant automatically becomes a witness in the case merely by reviewing evidence, including computer hard drives, provided by the Government pursuant to discovery. The undersigned however, does believe that a computer expert is necessary to assist the defense for a number of reasons and the undersigned understood the defense counsels' statement to merely imply that, absent an expert

being appointed, the only other person who had seen the relevant computer files would be counsel. As counsel cannot be a witness, then it is clear that the defense must have access to expert assistance, much as the Government attorneys have FBI agents who are technically qualified performing a variety of examinations of these same computers. The FBI agents who have performed these examinations will end up being witnesses at trial and at least one such witness has been identified as one of the Government's expert witnesses.

4. Counsel for the defendant Yaghi does not believe that counsel for Defendants Boyd or Sherifi meant that merely by reviewing hard drives that counsel automatically became a witness, rather it is believed by the undersigned that these lawyers meant that, absent an expert, they lacked anyone other than themselves who would have seen the relevant computer files and the expert is necessary for that reason alone. The experts are needed for a variety of reasons, including the fact that the experts can employ programs that counsel does not have the technical knowledge to utilize, giving the expert the ability to retrieve files that have been deleted and are not readily readable without the use of these special programs.

5. In conclusion, the undersigned is well aware that counsel can review evidence, including computer hard drives, without becoming a witness. Despite that, computer expert assistance is still needed by the defense for a variety of reasons and counsel for the defendant Yaghi will be filing a motion for such assistance shortly.

Respectfully submitted this 11<sup>th</sup> day of June, 2010.

/s/J. Douglas McCullough  
J. Douglas McCullough  
N.C. State Bar No.: 10136  
STUBBS & PERDUE, P.A.  
Post Office Box 1654  
New Bern, NC 28563-1654  
Telephone: (252) 633-2700  
Facsimile: (252) 633-9600

### **CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that he has this day served a copy of the foregoing pleading upon the following parties to this case by depositing a copy of the same in the United States mail bearing sufficient postage or electronically as indicated:

Via CM/ECF to the following:

R. Daniel Boyce  
Boyce & Isley, PLLC  
P. O. Box 1990  
Raleigh, NC 27602-1990  
[dboyce@boyceisley.com](mailto:dboyce@boyceisley.com)

Jason Harris Cowley  
U.S. Attorney's Office  
310 New Bern Ave.  
Suite 800  
Raleigh, NC 27601  
[Jason.Cowley@usdoj.gov](mailto:Jason.Cowley@usdoj.gov)

Rosemary Godwin  
Federal Public Defender  
150 Fayetteville St. Mall  
Suite 450  
Raleigh, NC 27601-2919  
[rosemary\\_godwin@fd.org](mailto:rosemary_godwin@fd.org)

Debra C. Graves  
F.P.D.  
150 Fayetteville St. Mall  
Suite 450  
Raleigh, NC 27601-8005  
[Debra\\_Graves@fd.org](mailto:Debra_Graves@fd.org)

Myron T. Hill, Jr.  
Browning & Hill  
200 E. Fourth St.  
Greenville, NC 27835  
[mhill@browning-hill.com](mailto:mhill@browning-hill.com)

Barbara D. Kocher  
U.S. Attorney's Office  
310 New Bern Ave.  
Suite 800

Raleigh, NC 27601  
[barb.kocher@usdoj.gov](mailto:barb.kocher@usdoj.gov)

Robert J. McAfee  
McAfee Law, P.A.  
P. O. Box 905  
New Bern, NC 28563  
[rjm@mcafee-law.com](mailto:rjm@mcafee-law.com)

John Keating Wiles  
Cheshire Parker Schneider Bryant & Vitale  
P. O. Box 1029  
Raleigh, NC 27602  
[keat.wiles@cheshirepark.com](mailto:keat.wiles@cheshirepark.com)

Joseph E. Zeszotarski, Jr.  
Poyner & Spruill  
P. O. Box 10096  
Raleigh, NC 27605  
[jzeszotarski@poynerspruill.com](mailto:jzeszotarski@poynerspruill.com)

Jason M Kellhofer  
US Department of Justice  
950 Pennsylvania Avenue NW  
Room 2720  
Washington, DC 20530  
[jason.kellhofer@usdoj.gov](mailto:jason.kellhofer@usdoj.gov)

John Bowler  
U. S. Attorney's Office  
310 New Bern Ave.  
Suite 800  
Raleigh, NC 27601-1461  
[john.s.bowler@usdoj.gov](mailto:john.s.bowler@usdoj.gov)

This 11<sup>th</sup> day of June, 2010.

/s/J. Douglas McCullough  
J. Douglas McCullough  
N.C. State Bar No.: 10136  
STUBBS & PERDUE, P.A.  
Post Office Box 1654  
New Bern, NC 28563  
Telephone: (252) 633-2700  
Facsimile: (252) 633-9600